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1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
Telephone: (202) 828-7452

Richard D. Lawson
Director
Federal Regulatory Relations
United Telephone Companies

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April 15, 1993

APR 15 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20036

RE: In the Matter of Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules
to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and
Policies for Local Multipoint Distribution Service
CC Docket No. 92-297

Dear Ms. Searcy:

Attached are the original and five copies of the Reply Comments of Sprint in the
proceeding referenced above.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Lawson", with a long, sweeping horizontal stroke extending to the right.

Richard D. Lawson

Attachment

RDL/mlm

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APR 15 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION

SUMMARY

Sprint Corporation respectfully replies to comments filed in response to the Commission's Notice of Proposed Rulemaking issued January 8, 1993 in CC Docket No. 92-297.

Ongoing FSS experiments do not justify a delay in establishing LMDS or a change in the Commission's proposed spectrum allocation to LMDS.

Sprint disagrees with those commenters supporting the Commission's proposal that licensees should be free to elect common or noncommon carrier status, except for LECs which must be regulated as common carriers. Rather, the Commission should review the service being offered and the manner in which it is offered and, based on that review, make the appropriate regulatory classification. This classification should be applied indiscriminately to all LMDS licensees.

Sprint disagrees with commenters suggesting that licensee selection should be by comparative hearings and with commenters suggesting set-asides. Sprint agrees with the suggestion that non-license holders should be able to apply for unserved areas during the license term. Sprint also agrees with those parties suggesting transfers before the lottery by well qualified applicants should be permitted. Finally, Sprint disagrees with GTE's statement that Commission Rule 63.54 restricts a LEC's ability to participate in LMDS.

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OFFICE OF THE SECRETARY

In the Matter of)	
)	CC Docket No. 92-297
Rulemaking to Amend Part 1)	
and Part 21 of the)	RM-7872; RM-7722
Commission's Rules to)	
Redesignate the 27.5 - 29.5)	
GHz Frequency Band and to)	
Establish Rules and Policies)	
for Local Multipoint)	
Distribution Service)	

REPLY COMMENTS OF SPRINT

Sprint Corporation ("Sprint"), on behalf of Sprint Communications Company L.P. and the United and Central Telephone companies, hereby respectfully submits its reply to comments filed in response to the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration, FCC 92-297, released January 8, 1993 ("NPRM").

I. INTRODUCTION

Sprint, as well the vast majority of commenting parties, endorsed the Commission's proposal to redesignate the 28 GHz band fixed service allocation to Local Multipoint Distribution Service ("LMDS") to provide video and other communications services. In its Comments, Sprint agreed with the Commission's proposal for two licensees for each service area and the use of a lottery for the award of licenses.

However, Sprint disagreed with the proposed use of Basic

instead that the Commission use the MSA/RSA scheme that was adopted for cellular. Additionally, while Sprint agreed that certain build out requirements were necessary to dissuade speculators from bidding, Sprint stated that the proposed 90% build out requirement within three years of the grant of a license was too onerous. Sprint suggested that the Commission use the build out requirements adopted in its cellular orders. Finally, Sprint disagreed with the Commission's proposal that LMDS licensees should be allowed unfettered discretion to choose between common carrier or noncommon carrier status.

Sprint still endorses the Commission's proposal to redesignate the 28 GHz band to LMDS and believes that its suggested modifications should be adopted. However, comments filed by several other entities require a reply.

II. OPPOSITION TO LMDS

Seventy-one (71) parties filed Comments in this docket, and the overwhelming majority supported the Commission's proposal to allocate spectrum for LMDS. Opposing the proposal was the National Aeronautics and Space Administration (NASA) and several satellite communications entities.¹ Their concerns were that Fixed Satellite Service ("FSS") requires the use of its entire 2500 MHz bandwidth allocation in the 27.5 - 30.0 GHz band and

1. See e.g., Loral Qualcomm Satellite Services, Inc. at p. 9 and Hughes Space and Communications Company and Hughes Network Services, Inc. at p.2.

that if LMDS shares spectrum with FSS, LMDS will provide technical interference with FSS. Additionally, these parties claim that FSS has been and still is experimental, and sufficient time has not been allowed for FSS to develop into a viable means of providing communications services. Therefore, these parties believe it is premature to license a competing technology that will also produce technical interference. Accordingly, they seek either a five year deferral of the Commission's proposal to allocate spectrum to LMDS or oppose the licensing of LMDS altogether. At a minimum, they request that LMDS be designated as "secondary" to FSS.

~~Spint~~ ~~has~~ ~~not~~ ~~believe~~ ~~it~~ ~~is~~ ~~in~~ ~~the~~ ~~public~~ ~~interest~~ ~~to~~

III. REGULATORY STATUS

Several parties embraced the Commission's proposal to allow LMDS licensees the freedom to elect common carrier or noncommon carrier status.² Video/Phone Systems, Inc. supports the concept of an election, except where the service provider is a LEC. In that event, Video/Phone Systems, Inc. insists that the LEC must be regulated as a common carrier in the provisioning of LMDS services.

Sprint disagrees with the proposed election of regulatory status. The Commission should not leave the choice of regulatory status to the unfettered discretion of the service provider. Rather, the Commission must first review the nature of the service being provided and the manner in which it is provided, and then the Commission should determine what is or is not common carriage. For instance, the Commission might determine that the provision of a particular LMDS service is common carriage, except when the service provider does not intend to, and does not in fact, provide the service indiscriminately to the public. In this event, the individual service providers may, consistent with such Commission determination, decide to be treated as a noncommon carrier through a decision to not offer the service indiscriminately to the public.

2. U S West, Inc. at pp. 4-5, RSW Communications, Ltd, at p. 12, Video/Phone Systems, Inc. at pp. 11-12.

Furthermore, there is no justification for disparate treatment for LECs. In the provisioning of LMDS, LECs do not possess any monopoly power and do not control the facilities over which LMDS will be provided. Therefore, a decision to treat LECs as common carriers merely because of their status as a LEC, but allow all other LMDS service providers to choose between noncommon carrier and common carrier status, would be arbitrary and unsupported by the record in this docket.

BellSouth agrees with Sprint's position on the election of regulatory status. In their Comments, BellSouth states:

However, once a LMDS service provider offers services to the public, it is the functional characteristics of those services and the manner by which they are offered that determines whether those services are common or non-common carrier services for regulatory purposes. A service provider's decision to "choose" or "elect" common or non-common carrier status is irrelevant unless the service provider actually operates in a manner consistent with that choice.³

BellSouth goes on to suggest a procedure for the Commission to follow in determining the regulatory status of LMDS providers:

At the time the LMDS licensee elects either common carrier or non-common carrier service status, the licensee should be required to set forth a description of the functional characteristics of the planned services and how the service provider intends to offer those services. The Commission can then use this information to verify that the election is consistent with how the service provider actually plans to operate, rather than simply relying upon what the service

Sprint agrees with the procedures suggested by BellSouth. These procedures may entail some minimal administrative burden; however Sprint believes these procedures, or similar ones, are necessary to ensure consistent regulatory treatment of like services provided in a like manner. Such consistency is necessary if the Commission truly wants to foster a competitive marketplace between the two LMDS licensees per service area.

IV. SELECTION PROCESS

In its Comments, Sprint opined that while competitive bidding might be desirable, Congress had not authorized competitive bidding. Further, Sprint opposed comparative hearings because such procedures would consume too much time to meet the Commission's goal of quick deployment of LMDS to the public. Sprint stated that random selection among qualified applicants is the method the Commission should choose. Many commenters agreed with Sprint on the use of the random selection method.⁵

However, Rochester Telephone ("Rochester") opposed the use of random selection because it purportedly encourages speculators.⁶ Rather, Rochester suggests that the Commission adopt "streamlined" comparative hearings. Sprint believes that

5. See e.g., Pacific Telesis Group at p. 4 and Cascom International, Inc. at pp. 2-3.

6. Rochester Telephone at p. 11.

comparative hearings that were truly streamlined, such that the introduction of LMDS was not seriously delayed, would do little to deter speculators. Furthermore, even "streamlined" comparative hearings will place a further strain on an already overloaded Commission. Accordingly, Sprint believes the Commission has no choice but to adopt random selection as the method for awarding LMDS licenses.

Ameritech favored competitive bidding but supported the use of lottery as a second choice. Additionally, as a means to limit the significant post-lottery litigation that has plagued past Commission lotteries, Ameritech suggests that the Commission pick one lottery winner and not rank subsequent entrants. Ameritech opines, and Sprint agrees, that ranking subsequent entrants provides too much incentive to litigate to the second and third place entries.

V. LICENSE TERM AND BUILD OUT REQUIREMENTS

Rochester suggested build out requirements that would make service available to 50% of the population residing in the licensed area within three years of the grant of the license.⁹ Sprint believes Rochester's proposal is a reasonable alternative to the "cellular like" build out requirements Sprint proposed.¹⁰

Additionally, Rochester suggested that the FCC provide the opportunity to serve vacant areas by adopting rules similar to the unserved area rules for cellular services.¹¹ Sprint agrees with Rochester that such a procedure would fairly balance the public's interest in the widespread availability of LMDS against the provider's need to deploy economically viable systems. Within the context of Sprint's proposed ten year license, Sprint believes it would be appropriate to allow such unserved area applications seven years after the grant of the license.

VI. TRANSFER RESTRICTIONS

Sprint disagreed with the Commission's proposal to prohibit



system has been constructed.¹² Sprint is, however, sensitive to the Commission's desire to restrict the application process to serious applicants. Sprint believes U S West proposed a viable procedure to satisfy the Commission's desires, yet allow applicants and licensees the flexibility required for the economic deployment of LMDS.

U S West suggests that the "best approach must focus on testing the legitimacy of an applicant before the applicant is able to participate in the lottery process" ¹³ U S West argues for strict enforcement of strict application standards. However, once an applicant is deemed bona fide, such applicant should not be prohibited from selling to or merging with other applicants -- even prior to the conduct of a lottery.

VII. SPECTRUM ALLOCATION

The United State Telephone Association ("USTA") opposes the reassignment of 2000 MHz (1,000 per each of two licensees per serving area) to LMDS and suggests holding the lower block of 1,000 MHz for future services and demand.¹⁴ Sprint disagrees. As Sprint stated in its Comments, "To provide the greatest benefit to the public in terms of competitive alternatives to CATV, sufficient bandwidth must be allocated to create equivalent

12. Sprint at 14.

13. U S West at p. 16.

14. USTA at pp. 4-5.

services."¹⁵ With the CATV industry announcing the near term availability of 500 channel capability, LMDS must have the 2000 MHz allocation of spectrum to offer a competitive alternative.

VIII. SET ASIDES

Sprint is opposed to the grant of any set-asides. While the education parties present numerous arguments for a specific education set-aside, it must be noted that the Commission has already provided a specific educational set-aside with ITFS.¹⁶ However, that does not mean that Sprint is not cognizant of licensees' social responsibility to provide some level of educational programming. In this regard Sprint agrees with the Comments of M3 Illinois Telecommunications Corp. It stated that "socially-responsible licensees will provide educational programming; the Commission can either mandate minimal levels of educational programming or incorporate educational programming criteria into its general license renewal criteria."¹⁷

IX. ON

GTE Service Corp. ("GTE") suggested that Section 63.54 of the Commission's Rules restrict the LECs' ability to provide video programming via LMDS.¹⁸ Sprint does not agree with GTE's interpretation of Section 63.54. As Sprint demonstrated in its

15. Sprint at p. 12.

16. 47 C.F.R. Sections 74.901 et seq.

17. M3 Illinois Telecommunications Corp. at p. 3.

18. GTE at pp. 8-9.

Comments, there are no restrictions on the LEC provision of video programming through LMDS in its service area. The LECs will not have monopoly power in LMDS, nor control over the facilities. Accordingly, the restrictions in Section 63.54 will not apply.

X. CONCLUSION

Sprint supports the Commission's proposal to redesignate the 28 GHz band fixed service allocation to LMDS to provide video and other communications services. However, in order to create robust competition to the existing cable service and to encourage the fullest development of the existing technology, Sprint urges the Commission to modify its proposal as set forth in Sprint's Comments and hereinabove.

Respectfully submitted,

SPRINT CORPORATION

By Craig T. Smith *RDL*

Jay C. Keithley
Phyllis A. Whitten
1850 M Street N.W.
Suite 1100
Washington, DC 20036
(202) 857-1030

Craig T. Smith
P. O. Box 11315
Kansas City, MO 64112
(913) 624-3065

ITS ATTORNEYS

April 15, 1993

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 15th day of April 1993, sent via hand delivery or U.S. First Class Mail, postage prepaid, a copy of the foregoing "Reply Comments of Sprint" in the Matter of Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, CC Docket No. 92-297, filed this date with the Secretary, Federal Communications Commission, to the persons on the attached service list.


Melinda L. Mills

Roy J. Herbert
Alpha Industries, Inc.
651 Lowell Street
Methuen, MA 01844

Deborah H. Morris
Ameritech
30 South Wacker Drive
39th Floor
Chicago, IL 60606

Marilyn Mohrman-Gillis
Association of America's Public Television Stations
1350 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Paula A. Jameson
Gregory Ferenbach
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314

Jack McBride
Organization of State Broadcasting Executives
939 South Stadium Road
Columbia, SC 29201

John Robert Curtin
Southern Educational Communications Association
939 South Stadium Road
Columbia, SC 29201

S. Standley Fishman
Baderwood International, Ltd.
P.O. Box 152
Rancocas, NJ 08073

William Roughton, Jr.
1310 N. Courthouse Road
Arlington, VA 22201
Attorney for Bell Atlantic Personal
Communications, Inc.

William B. Barfield
Thompson T. Rawls
BellSouth Corporation
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30367-6000

Tom W. Davidson
Paul S. Pien
Akin, Gump, Strauss, Hauer & Feld L.L.P.
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, D.C. 20036

Randolph H. Knight
Caribbean Communications Corp.
d/b/a St. Thomas-St John Cable
One Beltjen Place
St. Thomas, U.S.V.I. 00802

Richard S. Wilensky
Middleberg, Riddle & Gianna
2323 Bryan Street
Suite 1600
Dallas, TX 75201
Attorney for Cellular Television Assoc.

Robyn G. Nietert
Brown Nietert & Kaufman, Chartered
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036
Attorney for Coalition for Wireless Cable

James P. Ireland
Theresa A. Zeterberg
Cole, Raywid & Braverman
1919 Pennsylvania Avenue
Suite 200
Washington, D.C. 20006

Linda Shea Gieseler
Farrow, Schildhause & Wilson
1400 16th Street, N.W., Suite 501
Washington, D.C. 20036
Attorney for Competitive Cable Assoc.

Ronald D. Maines
Maines & Harshman, Chrt'd
Suite 900
2300 M Street, N.W.
Washington, D.C. 20037
Attorney for Group Partnership

Ronald D. Maines
Maines & Harshman, Chrsd.
2300 M Street, NW, Suite 900
Washington, D.C. 20037

Attorney for Everett T. Auer, Jr.; GHZ Equip. Co.; Faith C. Amby; Foresight
Communications; Harold Hornby; King Broadcasting Associates; Kingswood
Assoc.; Motter Communications, Inc.; Metromed Telecasting; Michael Levin; Multi-
Micro, Inc.; Patricia B. Milani; Perry W. Hadden; Robin V. Gilio; SanVista General
Partnership; Steven P. Seiter; Subscriber TV Partners; Video/Multipoint;
Virginia Communications, Inc.; Western Sierra Bancorp; Wireless Cable, Ltd.

Daniel L. Bart*
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

James R. Hobson
Jeffrey O. Moreno

Joseph D. Carney
Joseph D. Carney & Association

James G. Ennis
Barry Lambergman
Fletcher Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
Attorneys for Motorola Satellite Comm.

Wade J. Henderson
National Association for the Advancement
of Colored People
Washington Bureau
1025 Vermont Avenue
Suite 730
Washington, D.C. 20005

Robert M. Silber
National Captioning Institute, Inc.
5203 Leesburg Pike, Suite 1500
Falls Church, VA 22041

Peter Tannenwald
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
Attorney for National Captioning Institute

Edward R. Wholl
Katherine S. Abrams
NYNEX Mobile Communications Co.
2000 Corporate Drive
Orangeburg, NY 10962

William F. Adler
Pacific Telesis
1275 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20004

Michael J. Shortley, III
Rochester Tel
180 South Clinton Avenue
Rochester, NY 14646-0700

John W. Hunter
McNair Law Firm, P.A.
1155 Fifteenth Street, N.W.
Washington, D.C. 20005
Attorney for Rock Hill, Fort Mill & Lancaster
Telephone Companies

Michael R. Gardner
David Jeppsen
1150 Connecticut Avenue, N.W.
Suite 710
Washington, D.C. 20036
Attorneys for RSW Communications, Ltd.

Ron Milford
Technology Engineering Co.
P.O. Box 671192
Dallas, TX 75367

George Y. Wheeler
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
Attorney for Telephone & Data Systems, Inc.

Raymond A. Linsenmayer
U.S. Interactive & Microwave Television Assoc.
2300 M Street, N.W.
Suite 800
Washington, D.C. 20037

Richard West
University of California
Office of the President
300 Lakeside Drive
Oakland, CA 94612-3550

Dr. Daniel Niemeyer
University of Colorado at Boulder
360 Stadium, Gate II
Campus Box 379
Boulder, CO 80309-0379

Martin T. McCue
United States Telephone Assoc.
900 19th Street, N.W., Suite 800
Washington, D.C. 20006-2105

Robert B. McKenna
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036
Attorney for US West, Inc.

Albert Halnrin

Paul J. Sinderbrand